

ANNEX A

**DRAFT REPLY TO RAQUEL ROLNIK (UN SPECIAL RAPPORTEUR ON
HOUSING) FOR UK AMBASSADOR'S SIGNATURE**

Thank you for your letter of 12 April 2010 about the proposed evictions from the traveller site at Dale Farm, Essex.

I passed your letter to the relevant authorities in the UK and I am pleased that I am now in a position to provide answers to the questions raised in your letter. These are set out in the Annex below.

Yours etc.

PETER GOODERHAM

ANNEX

1. Are the alleged facts in the above summary of the case accurate?

- 1.1 The alleged facts contained in the summary are not correct in all respects, not do they give a complete account of the case. In answering this question above it may be helpful first to summarise the background and history of development at Dale Farm and then address a number of errors of fact.

Background

- 1.2 Dale Farm, Cray's Hill is the largest Gypsy and Traveller site in England. It is within the "Green Belt" between Basildon, Billericay and Wickford, in the county of Essex. "Green Belt" land has been an essential element, or cornerstone, of planning policy in England and Wales for some 50 years and its fundamental aim is to prevent urban sprawl by keeping land permanently open. It seeks to keep land open by requiring that, where planning permission is sought for most classes of development, permission is not granted unless there are very special circumstances justifying it.
- 1.3 At Dale Farm, there is a mix of authorised pitches (ie with planning permission) and unauthorised pitches (i.e. without planning permission) occupied mainly by families of Irish Traveller origin. Under the law in England and Wales, the unauthorised development in question (residential use of caravan and the construction of hard standings and structures) required planning permission before it was carried out and, given that it was located on Green Belt land, is subject to particularly tight controls.
- 1.4 Basildon District Council proposes to take action under section 178 of the Town and Country Planning Act 1990 in relation to the unlawful development at Dale Farm. This section authorises a local planning authority to enter land and take the steps themselves required by an enforcement notice (issued under Part 7 of the Town and Country Planning Act 1990). It is to be noted that the power is only exercisable in default of compliance with the notice by the owners and occupiers of the land in question. Moreover, it is only exercisable where an enforcement notice has been served by the local planning authority and to secure compliance with the terms of that notice. An enforcement notice is a notice which requires a breach of planning control to be remedied and there is a right to appeal to central government against the notice and to take legal proceeding to challenge the decision on appeal. The right to appeal includes the right to make the case that planning permission should be granted for the development concerned, that the steps required by the notice go further than is required to remedy the planning breach and that the time given to comply is not reasonably sufficient. It should be added that a criminal offence is committed in relation to an enforcement notice only once the time to

comply with it has expired. If an appeal is made against an enforcement notice, the notice is suspended until the appeal is determined.

- 1.5 The proposed action by the District Council is very much a last step in seeking to regularise development of the site. It relates to longstanding unlawful development. It is not simply development that has been built without planning permission, but one which is in breach of criminal law, because the time for compliance with the enforcement notices has long expired. It comes at the end of a complex sequence of events over the last ten years, involving the service of enforcement notices against unauthorised development, retrospective planning applications¹, appeals against the enforcement notices and refusals of planning permission, and a judicial review of the decision of the District Council to take action under section 178 of the Town and Country Planning Act 1990. That judicial review was finally decided by the Court of Appeal over a year and a half ago on 22nd January 2009.
- 1.6 Through this process there have been opportunities to have the planning merits of the unlawful development considered by the District Council, to have those merits reconsidered through appeals and to test the lawfulness of the process through judicial review. These opportunities have been taken. The unacceptability of the development has been confirmed during the legal process and extensions given to the time for compliance.

History

- 1.7 The following paragraphs provide a brief history of the development of the sites. A more comprehensive history in regard to the various plots concerned is given at paragraph 14 of the judgment by Mr Justice Collins in *McCarthy and others v Basildon DC*, which is attached at Annex A.
- 1.8 The initial stages of the development of Dale Farm for residential pitches for Gypsies and Travellers were granted planning permission by Basildon Council in the late 1980s and early 1990s with permissions given for some 37 pitches.
- 1.9 From the late 1990s there was the further sub-division of the area which had planning permission and the development of further plots on adjacent land. This unauthorised development was the subject of enforcement notices by the local planning authority – Basildon District Council. The occupiers applied for retrospective planning permission from the District Council, which was refused, and then appealed against the refusals of retrospective planning permission and enforcement notices.

¹ That is applications which are made after development has been carried, rather than before it is carried out, which is the correct approach.

- 1.10 This led to a sequence of public inquiries into those appeals and the decision on those appeals. A key decision in the process was that by the Secretary of State in May 2003, which dismissed a group of appeals against enforcement notices but extended the period for compliance to a consistent two years. The conclusions included:

‘The Secretary of State considers that the development is inappropriate development in the Green Belt and that, in addition to the harm caused by reason of inappropriateness, the developments have significant adverse effect on the openness of the Green Belt, and harm the character of the countryside in the area. He accepts that the shortage of authorised sites and the personal circumstances of the appellants are material considerations which weigh in favour of the proposals, but these need to be balanced against the harm to the Green Belt and other objections to the proposal in terms of highway safety and regarding the impact on residential amenity. The Secretary of State concludes that the considerations in favour of the proposal do not amount to very special circumstances that would justify allowing inappropriate development in the Green Belt or would indicate that he should determine the appeals other than in accordance with the development plan.’

- 1.11 During this period the numbers of families developing land without planning permission continued to increase, including a number who were evicted in January 2004 from the unauthorised Twin Oaks site in Hertfordshire, which is referred to in the 3rd paragraph on page 2 of your letter. Paragraph 14 of the judgment in *McCarthy and others v Basildon DC* noted:

‘The extension of 2 years was intended to give them an opportunity to find somewhere to go, but rather than take advantage of the extra time, it was used to consolidate their use of the site.’

- 1.12 At the end of the extended compliance period in July 2005 residents of Dale Farm together with residents of the Hovefields Drive sites applied for a judicial review of Basildon’s decision to take action under section 178 of the Town and Country Planning Act 1990. An injunction was granted against Basildon District Council preventing it from taking any action in this respect pending the determination of the judicial review.
- 1.13 The judicial review was delayed until the determination of a further planning appeal (public inquiry in August 2006 followed by the Secretary of State’s decision in February 2008.) The judicial review was eventually heard in the High Court in February 2008. In his decision of May 2008, Mr Justice Collins found in favour of the Dale Farm residents.

- 1.14 Basildon Council was granted leave to appeal to the Court of Appeal. In January 2009 the Court of Appeal found in favour of Basildon, confirming the legality the proposed action under section 178 of the Town and Country Planning Act 1990.
- 1.15 In May 2009 the Dale Farm residents were refused leave to appeal to the House of Lords.
- 1.16 Basildon District Council then went through a procurement exercise with the connected contract for action under section 178 and advertised in the Official Journal of the European Union in September 2009. In December 2009, the Council appointed Constant and Co. to carry out the eviction. Our understanding is that during 2010 the Council has been planning its course of action with these bailiffs in consultation with the police, emergency services and a range of service providers. On 29 June 2010, working on behalf of Basildon District Council, Constant and Co cleared six unauthorised pitches at Hovefields Drive, all of which were vacant.

Specific Comments

- 1.17 It is misleading to suggest (Page 1, last paragraph) that all of the community at Dale Farm is threatened. The land there has over an extended period since the 1980s been gradually subdivided into a substantial number of plots, which are owned and sub-leased by individual families, principally of Irish Travellers. A significant part of the site has planning permission as a result of decisions in the late 1980s and early 1990s and it is only the residents of the plots without the necessary planning permission that are at risk of eviction.
- 1.18 It is also misleading to suggest (Page 1, last paragraph) that planning permission was refused 'when the land was designated as Green Belt'. Our understanding is that a substantial extension of the Green Belt covering much of the non-built up area of Basildon district, and including Dale Farm and Hovefields Drive, was approved in 1976 and hence significantly predates the unlawful development.
- 1.19 In connection with the last sentence in the second full paragraph on page 2, in his judgment Mr Justice Collins commented in regard to the way that Constant and Co's staff carried out eviction from the Twin Oaks site and its implications for Dale Farm (see paragraph 15):

'The conduct was unacceptable and the evictions were carried out in fashion which inevitably would have led to harm to those affected. I have no doubt that the Council must reconsider the use of the firm in question and ensure that any eviction ... is carried out in as humane a fashion as possible. '

1.20

The fifth paragraph of page 2 provides a partial overview of policy history towards traveller site provision. This statement on Government policy is out of date and does not note developments since 1994 to the date of the letter. Planning policy and law is different in Wales, Scotland, England and Northern Ireland. The following information refers to the situation in England (in which Dale Farm is located).

Decisions on housing supply, including the provision of travellers' sites, rest with local planning authorities. The assessment of Gypsy and Traveller accommodation needs when carrying out a periodical review of housing needs under section 8 of the Housing Act 1985 is a statutory requirement under section 225 of the Housing Act 2004. It is Government policy that local authorities produce a Core Strategy setting out the overall development vision for their area. The Planning and Compulsory Purchase Act 2004 puts a duty on local authorities to plan for the needs of their area (13:2), which should include the population composition.

At present, ODPM Circular 01/2006 is current policy but because Regional Strategies have been revoked, the level of provision should be determined locally. The aim of Circular 01/2006 was to increase site provision in England and provides guidance on the planning aspects of finding sites for gypsies and travellers and how local authorities and gypsies and travellers can work together to achieve that aim.

The UK Government intends to replace this circular as part of a broader package of reforms to the planning system... It will publish and present to Parliament a simple and consolidated national planning framework covering all forms of development. It will make an announcement on how it proposes to take forward the national planning framework and the implications for specific areas of planning policy. [COMMENT: This will need updating as the announcement is due on 27 July (for example, it will be the *National Planning Policy Framework*.)]

2. **Has a complaint been lodged on behalf of the alleged victims?**

- 2.1 A number of Dale Farm residents have exercised their right of appeal against various enforcement notices and against refusals of retrospective planning permission. The judicial review referred to above was a mechanism through which the legality of the proposed action under section 178 of the Town and Country Planning Act 1990 has been challenged.

3. **On what legal basis are the evictions to be carried out? How many people will be affected by the evictions?**

- 3.1 Section 178 of the Town and Country Planning Act 1990. The estimate of 90 families, comprising about 300 people, cited at the bottom of page 1 of the letter is of the right order.

4. **Did appropriate consultations take place with the affected persons? Were measures taken in order to reach a peaceful and viable solution in agreement with the Dale Farm community? Were the planned evictions halted until an adequate solution is achieved to meet the housing needs, including suitable and cultural adequate accommodation of the Dale Farm community?**

4.1 *Consultations*

Basildon District Council has appointed a Liaison Officer with a dedicated phone number who coordinates the response to any queries concerning the Council's proposed action. We also understand that the individual needs of each family will be considered before any eviction. Basildon DC is working with Essex County Council (the education and social services authority) and the South Essex Primary Care Trust (the health authority) to ensure any specific needs are addressed.

Before any eviction is carried out there will be a 28 day notice period. As well as serving site notices and sending personal letters, Basildon Council intends that each of the families will be personally visited to ensure they are fully aware of what is being proposed.

4.2 *Measures to reach a peaceful and viable solution*

Apart from participation in the planning appeals and redress through the courts discussed above, the following is relevant.

In planning for the eviction we understand that Basildon Council is working closely with the police, emergency services, local education authority, health authorities, social services etc to ensure that the eviction is carried out peaceably and that the likely impact on children, vulnerable adults, those with health conditions and other specific needs is taken into account.

In responding to Mr Justice Collins' concerns about previous evictions, Basildon Council undertook to provide information on how it would undertake the proposed eviction. That took the form of an undertaking, which is attached as Annex B.

4.3 *Achieving an adequate solution to the housing needs, including cultural accommodation*

Every local housing authority is under a statutory duty (s225 Housing Act 2004) when undertaking a review of housing needs in their district

under s8 of the Housing Act 1985 to carry out an assessment of the accommodation needs of gypsies and travellers residing in or resorting to their district.

As set out in the statutory Homelessness Code of Guidance [insert link] if a duty to secure accommodation arises in the case of applicants who normally occupy moveable accommodation, the local authority is not required to make equivalent accommodation available. However, the authority must consider whether such options are reasonably available, particularly where this would provide the most suitable solution to the applicants accommodation needs. Where an appropriate site is not immediately available the local authority may need to provide an alternative temporary solution until a suitable site or some other suitable option becomes available. Where the authority is satisfied that there is no prospect of a suitable site for the time being, there may be no alternative solution.

Basildon Council has been working with Essex County Council, the Local Government Association, the Homes and Communities Agency and the Government Office for the East of England to identify alternative sites on to which families affected could relocate by agreement.

5. Was an impact assessment carried out in order to identify the social and housing effects of the planned evictions?

Our understanding is that Basildon DC is carrying out impact assessments as part of planning for the proposed evictions.

6. Did Basildon DC select the private company Constant and Co. (Bedford) Ltd to undertake planning enforcement action? Did the selection process take into account the records of the company concerning corporate social responsibility and respect for international human rights standards? Please provide information regarding the proceedings and results of the selection process.

6.1 Basildon Council has appointed Constant and Co. It is aware of the criticisms of their record at previous evictions. In responding to Mr Justice Collins concerns Basildon Council undertook to provide information on how it would undertake the proposed eviction. That took the form of an undertaking, which is attached as Annex B.

6.2 We understand that a very full consideration of human rights was given both in the High Court and in the Court of Appeal. The Council also gave various assurances regards how it would deal with future processes including the procurement of agents to undertake an eviction if necessary. This

included reference to following a proper procurement process and taking in account the past history of undertaking this type of work in making a decision. During the procurement process, the undertaking was honoured as well as other important considerations to ensure all of the Council's requirements could be met. The Council have advised us that their ultimate aim is to ensure that, if eviction is necessary, it will be carried out as humanely as possible and they are working with all their partners, residents and agents (Constant and Co) during the current operational planning stage to achieve that end.

7. What measures have been foreseen to ensure that the persons affected by the evictions will not become homeless? Were the affected persons offered compensation of their houses and livelihood? If not, please state the reasons for this decision. What has been foreseen in terms of relocation?

- 7.1 Generally, where persons are lawfully evicted and do not have alternative accommodation available there is a likelihood they are at risk of homelessness. England has one of the strongest legal safety nets in the world to assist persons who face homelessness. If a local housing authority in England has reason to believe that someone who applies to them for housing assistance may be homeless or likely to become homeless within 28 days, they must make inquiries and decide whether they owe any duty to the applicant and those who normally reside (or might reasonably be expected to reside) with him. The duties owed range from providing advice and assistance to the main homelessness duty of securing settled accommodation, dependent on whether or not the applicant has a priority need or is found to be intentionally homeless.
- 7.2 A person is homeless if he or she has accommodation available for his or her occupation which is a movable structure and there is nowhere that he or she is entitled or permitted to place it and reside in it. The affected families would already be homeless in English law because they have set up movable homes in a place where they do not have legal permission to station them or live in them.
- 7.3 The affected families have been invited to make homeless applications. The Council has also been making offers of housing to those for whom it owes a statutory duty to secure accommodation.
- 7.4 The affected families are not entitled to compensation because the development they have carried out is unlawful.
- 7.5 Under the homelessness legislation (the safety net referred to above) the local housing authority would have a duty to secure suitable alternative accommodation for any person who was (1) eligible for assistance, (2) homeless though no fault of their own, and (3) within a priority need group. Certain categories of persons from abroad are

ineligible for assistance (e.g. those with limited leave to remain in the UK on condition of no recourse to public funds). The priority need groups include (among others) pregnant women, people with whom a dependant child resides and people who are vulnerable for some reason.

- 7.6 In considering whether accommodation is suitable for an applicant (and those who reside with him or her), the authority would have to take account of, among other factors, any cultural aversion to bricks and mortar accommodation. Where a homeless applicant has a mobile home and is homeless only for lack of a lawful site to place it and live in it, the local authority would be expected to try and find a suitable site, so far as possible. However, if there is no suitable site available, the authority would have to offer suitable alternative accommodation until such time as a site became available.